

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4882 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SANJAY @ SANJU MOHAN PALIT

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR SJ DAVE, AGP for Respondents.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 15/09/97

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu has brought under challenge the detention order dated 19/6/1997 rendered by the respondent no. 2 u/S. 3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (Act No. 16 of 1985) (for short "the PASA Act").

2. The grounds on which the impugned order of detention has been passed appear at Annexure-B to the petition. They inter-alia indicate that the petitioner by himself and with the aid of his associates has been indulging in criminal and anti-social activities of assaulting and causing hurt to innocent persons and creating atmosphere of fear in the mind of people. The Detaining Authority has placed reliance upon four offences of 1997 registered in Udhna and Limbayat Police Stations inter-alia under sections 323, 324, 365, 504, 506 and 114 of the Indian Penal Code read with sec. 135 of the Bombay Police Act and one offence of 1995 under section 25 (1) (a) of the Arms Act registered in Udhna Police Station. The particulars of such offences have been set out in the grounds of detention.

3. It has been recited that the detenu's anti-social activity tends to obstruct maintenance of public order and in support of such conclusion statements of three witnesses have been relied upon for incidents dated 25/4/1997 17/5/1997 and 3/6/1997 indicating beating in public the concerned witnesses and creating atmosphere of fear amongst people collected at the time of such incidents.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner. The petitioner has been branded as a 'dangerous person' within the meaning of section 2(c) of the PASA Act.

5. The petitioner has challenged the impugned order of detention and his continued detention on number of grounds inter-alia on the ground contained in para. 4(k) of the petition. That ground reads as under :-

"The petitioner respectfully submits that the advocate of the petitioner has made a representation dated 3/7/1997 addressed to the Home Minister by Registered Post A.D. and the same has been duly received by the office of the Home Minister. Annexed hereto and marked as ANNEXURE 'C' is a copy of the representation dated 3/7/97.

That the State Government has to satisfy this Hon'ble Court that the representation dated 3/7/97 has been considered by it as expeditiously as possible. In failing to do so, the continued detention of the petitioner becomes bad in law."

No affidavit in reply has been filed. But the learned A.G.P. submitted from the file that the representation was received on 10/7/1997 and the same was decided on 11/8/1997. In my opinion, this belated consideration of the petitioner's representation dated 3/7/1997 has clearly adversely affected the right of the petitioner as guaranteed under Article 22(5) of the Constitution of India. Hence, continued detention of the petitioner has obviously been rendered illegal.

6. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed on the ground of belated consideration of the representation, it is not necessary to deal with the other grounds. Hence, following order is passed :-

8. The continued detention of the petitioner under the impugned order of detention is held to be illegal. The petitioner-detenu- Sanjay alias Sanju Mohan Patil shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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